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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

November 1, 2013

The Honorable Lawrence G. Wasden
Chairman
Board of Directors
American Legacy Foundation
1724 Massachusetts Avenue NW
Washington, DC 20036

Dear Attorney General Wasden:

The tax exempt sector is a large part of our economy and receives substantial financial benefits from the tax code. As a result, it is important that this sector receives appropriate scrutiny and is accountable to the public for its actions. From 2003 to 2007, in an effort to increase accountability, I investigated abuses at the Nature Conservancy, the American Red Cross, and the Smithsonian Institution. These investigations led, in part, to greater transparency on the IRS form 990 and an understanding by the Independent Sector, the leading voice of the non-profit industry, that charities must be open and transparent about how their funds are spent.

The requirements of openness and transparency are especially essential for the Legacy Foundation as it has benefitted from a multi-billion dollar national settlement negotiated by State Attorneys General as well as significant government support including \$2.5 million in government grants in 2011 alone.¹ The tobacco settlement created the Legacy Foundation and gave it a critical mission. According to Legacy's website its mission is "...studying and providing public education about the impact of tobacco in order to reduce its use and associated death and disease."² Every dollar wasted or not spent studying and educating is a dollar that cannot be used for either of those important purposes.

On October 26, 2013, the *Washington Post* reported that the Legacy Foundation had allowed a \$3.4 million embezzlement to go unreported for 3 years and then minimized its impact on its form 990.³ The IRS' guidance on this issue is very clear. If a "material diversion" of assets has occurred, a term the IRS defines as "including but not limited to embezzlement or theft," an organization is required to, "explain the nature of the diversion, amounts or property involved, corrective actions taken to address the matter, and pertinent circumstances."⁴ The

¹ Legacy Foundation 2011 990, Part VIII.

² Legacy Foundation available at: <http://www.legacyforhealth.org/about/our-history>

³ *Washington Post*, Inside the Hidden World of Thefts, Scams and Phantom Purchases at the Nation's Nonprofits, October 26, 2013, Joe Stephens and Mary Pat Flaherty.

⁴ IRS Form 990 Instructions.

Legacy Foundation provided no public explanation in its form 990 regarding the nature of the diversion or the exact amount of money and property involved.⁵

The form 990 plays a critical role in ensuring that charities live up to their mission and properly steward donor funds. If charities decline to follow the IRS' guidance, the form 990 is useless. In this case, the Legacy Foundation has claimed that it did not violate the disclosure requirements of form 990 and claims that the Department of Justice instructed it not to reveal the extent of the embezzlement.⁶ If true, this is extremely disturbing. However, there appears to be little evidence to support this claim. If the Department is telling charities to falsify their form 990s, then Congress and the IRS need to see the evidence immediately.

The Legacy Foundation has also stated that it did not pursue a civil suit to recoup the embezzled funds.⁷ This decision not to pursue restitution is also concerning. Beyond the embezzled funds, the Legacy Foundation's form 990 also contains several entries regarding fundraising, administrative expenses, travel expenses, and salaries that raise more questions.

All charities, particularly those that depend on government support, should be open and transparent. To help provide context and understanding for Legacy's actions as well as information regarding Legacy's stewardship of government and settlement funds, please provide the following documents and answer the following questions:

1. Please provide all board minutes which mention "Deen Sanwoola" or embezzlement of Legacy Foundation funds.
2. Please provide all evidence which supports the claim that, "...federal authorities had asked the group not to discuss the incident publicly, while the investigation was ongoing."⁸
3. Which employees, if any, have been held responsible for this embezzlement and what actions, if any, have been taken against them?
4. Please provide a list of all your board meetings and the locations of those board meetings from 2008 to the present.
5. Please provide the attendance for all board meetings from 2008 to present including, who attended the entire meeting, who attended part of the meeting, and who was absent.
6. When did the Board of Directors last do a self-evaluation of the Board's work and performance? Please provide a copy of that evaluation.

⁵ Legacy Foundation 2011 990, Schedule O.

⁶ Washington Post, Inside the Hidden World of Thefts, Scams and Phantom Purchases at the Nation's Nonprofits, October 26, 2013, Joe Stephens and Mary Pat Flaherty.

⁷ *Id.*

⁸ Legacy Foundation, Statement, National Public Health Foundation Addresses Substantial Financial Loss, After Alleged Fraud Occurred From 1999-2007, October 27, 2013.

- a. When does the board intend to conduct another evaluation?
7. When has the board last conducted an evaluation of the effectiveness of the American Legacy Foundation's operations? Please provide a copy of the evaluation.
 - a. When does the board intend to conduct another evaluation?
8. Please provide the names of the audit committee and how often they met from 2008 to the present.
9. Please provide the attendance for all audit committee meetings held from 2008 to present, who attended the entire meeting, who attended part of the meeting, and who was absent.
10. Please provide form 990-Ts for 2009, 2010, and 2011.
11. Please provide copies of all records relating to communications regarding Schedule O of Legacy's 2011 form 990.
12. Please provide copies of all records relating to communication regarding Legacy's decision not to pursue a civil lawsuit against Mr. Sanwoola.
13. Please provide a copy of Legacy's whistleblower policy and when the policy was created.
14. What steps did Legacy take to ensure that the employee who blew the whistle on Mr. Sanwoola was not retaliated against?
15. Please provide all justifications (including compensation surveys) for the salaries of Legacy's senior executives.
16. Legacy's most recent form 990 says that Legacy spent \$964,693 on travel. Please provide detailed accounts of this travel.⁹
17. Legacy's most recent form 990 says that Legacy spent \$571,126 on conferences, conventions, and meetings. Please provide detailed accounts of how these funds were spent.¹⁰
18. Legacy's 2011 form 990 listed a \$300,000 contribution to the 2012 Aspen Festival and a \$50,000 sponsorship to the November 2011 Atlantic Green Intelligence Series forum under "Grants and Other Assistance to Governments and Organizations in the United States."¹¹ Were the funds calculated in as expenses under Part IX, line 19 (conferences, conventions, and meetings)? If not, why not and where on Part IX were they calculated?

⁹ Legacy Foundation 2011 990, Part IX, Line 17.

¹⁰ Legacy Foundation 2011 990, Part IX, Line 19.

¹¹ Legacy Foundation 2011 990, Schedule I, Part II.

19. Legacy's 2011 form 990 lists a \$100,000 grant to the University of Houston's Center for Health Equity and Evaluation Research.¹² The purpose given is "Sponsor – CHEER/ICC 6/12."¹³ Please provide further details regarding this grant.

20. Under "Grants and Other Assistance to Governments and Organizations in the United States", Legacy's 2011 990 lists a total of \$127,600 spent on eight separate galas and awards dinners, including a "Fashion Award Dinner."¹⁴ How does attending multiple galas and awards dinners support Legacy's mission of "...studying and providing public education about the impact of tobacco in order to reduce its use and associated death and disease"?

- a. Please provide a list of all employees and board members who attended galas and awards dinners and which events they attended.
- b. Please provide any board minutes in which these galas and awards dinners were mentioned.

21. Under "Grants and Other Assistance to Governments and Organizations in the United States", Legacy's 2011 990 lists a \$10,000 grant to Operation REACH in New Orleans, LA.¹⁵ The purpose given is "Sponsor – GYAF 4/12".¹⁶

- a. Is it correct that "GYAF" refers to Operation REACH's Gulfsouth Youth Action Corps? If so, what connection did this grant have to Legacy's mission regarding tobacco?
- b. Please provide any board minutes in which Operation REACH is mentioned.

22. Legacy issued \$28 million in tax exempt bonds to purchase 2030 M Street NW in Washington DC, an approximately 160,000 square foot office building.

- a. When did Legacy move its headquarters from 2030 M Street NW to 1724 Massachusetts Ave NW?
- b. Please provide any analysis regarding the charitable purpose of purchasing this office building and its overall effect on Legacy's financial status.
- c. Legacy recently financed a "inviting and welcoming reception area" and "polished" exterior entrance for 2030 M Street.¹⁷ Please provide the total cost of this project.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ OTJ Architects, available at: <http://www.otj.com/Portfolio/Project-details/id/5.aspx>

- d. Legacy's 2011 form 990 lists a net loss of \$765,303 under net rental income. Please provide details of Legacy's \$3,076,741 in rental expenses and \$2,311,438 in rental income.¹⁸
23. The National Association of Attorneys General currently occupies the 8th floor of 2030 M Street.¹⁹ Given the close ties between the Association and the Legacy Fund, what steps are taken to reduce conflicts of interest when negotiating rent?
- a. How much does NAAG pay the Legacy Foundation for its lease and how many square feet does it occupy?
24. From 2009 to 2011, Legacy has spent a total of \$459,678 on private fundraising companies.²⁰ The gross receipts from these contracts has been \$50,810 bringing the total loss for Legacy's fundraising contracts to \$408,868. In fact in 2011 and 2012, Legacy has not recorded any gross receipts despite spending \$263,928 in private fundraising contracts. Please provide all board minutes which discuss Legacy's private fundraising efforts.
25. Legacy's 2011 form 990 lists fundraising expenses of \$1,294,795 including \$61,837 in travel expenses, but no income from fundraising events and only \$184,704 from non-government contributions, gifts, and grants.²¹ In 2010 Legacy spent \$1,459,314 on fundraising expenses, did not raise any money from fundraising events and raised \$621,773 from non-government contributions, gifts, and grants.²² What efforts has Legacy made to improve its fundraising?
26. From 2009 to 2011, Legacy has spent a total of \$95,123,596 on expenses described as "other" expenses on its form 990.²³ Please provide detailed accounts of how these funds were spent.
27. Please describe the interest rate swap which led to a \$7,851,140 liability listed on Part X of the form 990.
- a. What was Legacy's total liability for interest rate swaps?
28. Legacy's 2011 form 990 shows \$5,459,035 in investment management fees, more than the \$4,689,641 Legacy made in charitable grants.²⁴ Please provide details regarding these management fees.

¹⁸ Legacy Foundation 2011 990, Part VIII

¹⁹ National Association of Attorneys General, available at: <http://www.naag.org/>

²⁰ Legacy Foundation 2009, 2010, and 2011 990, Schedule G, Part I.

²¹ Legacy Foundation 2011 990, Part VIII, Part IX.

²² Legacy Foundation 2010 990, Part VIII, Park IX.

²³ Legacy Foundation 2009, 2010, and 2011 990, Part IX. (These numbers can be found at Part IX, Line 11, Subpart g on Legacy's 2009 and 2011 form 990 and Part IX, Line 10, Subpart g on Legacy's 2010 form 990.)

²⁴ *Id.*

29. Please provide the names of Legacy's investment committee, how often they meet, and where they meet.
30. Legacy's 2011 form 990 shows close to \$300 million in hedge and private equity funds and over \$200 million commingled or common trust funds. Please provide the names of the funds Legacy invests in.
- a. Does Legacy ensure that none of these funds invest in tobacco related companies? If so, how?

Thank you for your cooperation and attention in this matter. I would appreciate a response by November 15, 2013. If you have any questions, please do not hesitate to contact Chris Lucas and Chris Conlin at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary